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Docket No. 4303-4050US2**REMARKS**

Claims 58-63 and 65-88 are pending in the present application. The Examiner has allowed claims 62, 63, 65-69 and 80-88. Claims 58-61, 65 and 70-79 have been amended. No new matter has been added by these amendments.

Applicants respectfully request favorable consideration in light of the preceding amendments and following remarks.

Claim 68 was objected to because the Examiner asserted that it is an identical copy of claim 65. Applicant has amended claim 65 to further distinguish it over claim 68.

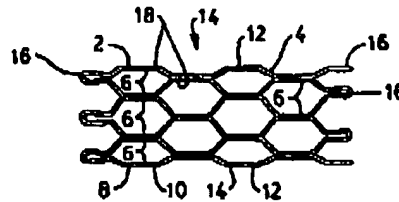
Claims 58-61 and 70-79 were rejected under 35 U.S.C. §102(b) as being anticipated by Simon et al. (USP 5,354,308).

Applicant respectfully traverses this rejection and submits that claims 58-61 and 70-79 are patentable over Simon et al. Simon et al. discloses a self-expanding stent that may assume (1) a relatively rigid expanded condition when deployed at the treatment site and (2) a flexible compressed condition when being delivered through the vasculature to the treatment site. Simon et al. further discloses that the self-expanding stent may change from the expanded condition to a partially compressed condition to allow the deployed stent to be repositioned at the treatment site. Simon et al. discloses the following three embodiments.

The first embodiment illustrated in Figure 2 (reproduced below) consists of a stent having proximal and distal rows of cells with finger portions 16.

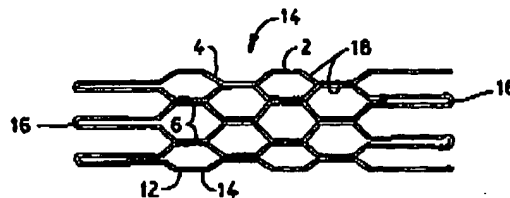
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**FIG. 2**

Disposed between the proximal and distal rows of cells is a body portion 14 consisting of two rows of symmetrical hexagonal cells having no finger portions 16. As expressly stated in Simon et al., the finger portions 16 "facilitate a gradual reduction in radially outwardly extending pressure exerted by the stent" on the vasculature wall. Col. 3, lns. 29-32. Simon et al. further states that the body portion 14 of the stent "having the mesh construction exercises a substantially greater radial bias than do the finger portions 16." Col. 3, lns. 51-54. Accordingly, the first embodiment shown in Figures 1 and 2 discloses a stent having distal and proximal end rows of cells that exert substantially less radial force than the intermediate rows of cells disposed therebetween. This is directly opposite of the present invention.

Figure 3 (reproduced below) illustrates an alternative embodiment to that shown in Figures 1 and 2 wherein the finger portions 16 in the proximal and distal end rows of cells are lengthened to provide even less radial force than the intermediate rows of cells disposed therebetween.

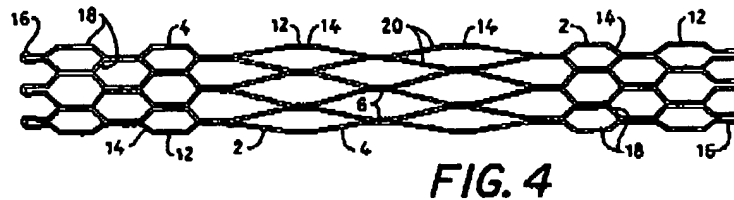
**FIG. 3**

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Accordingly, this embodiment is even further removed than the first embodiment from the present invention.

Figure 4 (reproduced below) illustrates a second alternative embodiment consisting of (1) proximal and distal end rows of cells having finger portions 16, (2) two rows of symmetrical hexagonal cells adjacent each of the proximal and distal end rows of cells having finger portions 16 that exert substantially more radial force than the proximal and distal end rows of cells and (3) an intermediate portion having a plurality of rows of elongated cells 20 that exert less radial force than the two sets of neighboring symmetrical hexagonal rows of cells.



While the Examiner's rejection starts by referring to the disclosure in Figures 3 and 4 of Simon et al., it appears that the rejection is based solely on the second alternative embodiment shown in Figure 4. In the rejection, the Examiner asserts that the distal most and proximal most rows of cells having finger portions 16 are adapted to exert greater radial force and are adapted to be more flexible than the rows of cells 20 in the intermediate portion of the stent. In support of this assertion, the Examiner cites the disclosure at Col. 3, lns. 35-39 and 54-60 which provides that (1) the proximal and distal rows of cells having the finger portions 16 exert less radial force than the two adjacent rows of cells 18 and (2) the intermediate portion of the stent formed by elongated cells 20 exerts less radial force than the two adjacent rows of cells 18.

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Contrary to the Examiner's assertion, Simon et al. contains no disclosure whatsoever comparing the relative flexibility of any portion of the stent shown in FIG. 4 when the stent is in its expanded condition. Instead, Simon et al. expressly states and exclusively discloses that when the stent is in its expanded condition, it "is *relatively rigid* and substantially tubular in configuration." Abstract (emphasis added). This is repeatedly confirmed throughout the patent. In the Summary of The Invention section, the Simon et al. patent states the "stent comprising a wire skeletal frame, the frame being adapted to assume a first condition *in which the frame is expanded, rigid, and substantially tubular in configuration.*" Col. 1, lns. 65-68 (emphasis added). Similarly, in the Description of The Preferred Embodiment section, the Simon et al. patent states "[i]n FIGS. 1 and 2, the illustrative stent is shown in a first condition *in which the frame 2 is expanded, relatively rigid, and substantially tubular in configuration.*" Col. 3, lns. 9-11 (emphasis added). Accordingly, Simon et al. fails to disclose a stent having cells in rows disposed at an end of the stent that are more flexible than cells disposed in rows in the central section of the stent.

The Applicant respectfully submits that the Examiner's assertion that the finger portions 16 of the cells in the distal and proximal most rows of the stent in FIG. 4 renders these cells more flexible than the symmetrical hexagonal cells in the adjacent rows is unfounded. First, Simon et al. contains no disclosure regarding the relative flexibility of the cells having the finger portions 16 and the symmetrical hexagonal cells 18 in the two adjacent rows of the stent. Second, one of ordinary skill in the art would understand that by virtue of the acute bend at the tip of each finger portion 16 and the close proximity of the wire lengths forming each finger portion 16 (resulting in a greater proportion of wire per unit area than the symmetrical hexagonal

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cells 18) the cells in the proximal most and distal most rows of the stent shown in Figure 4 would be less flexible than the symmetrical hexagonal cells in the adjacent two rows of the stent.

In addition, even if Simon et al. did disclose that the cells containing finger portions 16 in the proximal most and distal most rows of the stent were more flexible than the symmetrical hexagonal cells 18 in the two adjacent rows of the stent, Simon et al. would not anticipate the rejected claims. Claims 58-61 and 70-79 specify that the cells disposed in the row(s) at the proximal and/or distal ends of the stent (1) exert greater radial force and (2) are more flexible than the cells disposed in the rows in the central section. Contrary to these claim limitations, Simon et al. expressly discloses that the cells with the finger portions 16 exert less radial force than the symmetrical hexagonal cells 18 in the two adjacent rows of the stent. Therefore, the Examiner's assertion regarding the relative flexibility of the cells having finger portions 16 in the proximal and distal most rows of the stent and the symmetrical hexagonal cells 18 in the adjacent rows of the stent is irrelevant to the patentability of the subject matter recited in claims 58-61 and 70-79.

Further, Simon et al. fails to disclose a stent having cells in the rows disposed at the proximal and distal ends of the stent that exert more radial force than the elongated cells 20 disposed in the intermediate rows of the stent. Simon et al. only discloses that "when it is desired to have more force near the ends of the stent than at its center, the embodiment shown in FIG. 4 may be used." Col. 3, lns. 54-55. (emphasis added) With reference to the embodiment shown in Figure 4, Simon et al. goes on to state that "the central portion of the tubular body portion 14 includes elongated cells 20 exercising less radial force than the cells 18." Col. 3, lns. 57-60. Taken together these two passages merely state that the elongated cells 20 exert less

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radial force than the cells 18 disposed in the two adjacent rows "near" the stent ends, not the cells disposed in the proximal most and distal most rows "at" the stent ends. If the Simon et al. patent intended to refer to the relative radial force exerted by the elongated cells 20 and the hexagonal cells with fingers 16 as suggested by the Examiner, the patent would have simply referred to the cells in the rows "at" the proximal and distal ends of the stent, rather than the cells in the rows "near" the proximal and distal ends of the stent.

The Examiner also cited In re Hutchison for the proposition that the recitation of the phrase "adapted to" in claims 58-61 and 70-79 does not constitute a limitation in any patentable sense. Applicant respectfully traverses this broad application of In re Hutchison and submits that it has no bearing on the recitation of the phrase "adapted to" in the pending claims. The "adapted to" phrase addressed in In re Hutchison pertains to the intended use of the claimed article of manufacture. Specifically, the claim at issue in In re Hutchison reads as follows:

As an article of manufacture, adapted for use in the fabrication of a metal template or the like suitable for metal-working operations, a laminated unite comprising a backing element surfaced with paper having an exposed outer surface to receive the template design . . .

In contrast, the "adapted to" phrase as recited in the rejected claims of the present application refers to the physical or structural characteristics of the claimed stent, not a particular use of the stent. Notwithstanding this clear distinction, applicant has amended claims 58-61 and 70-79 to delete all references to the phrases "adapted to." Accordingly, applicant respectfully submits that the Examiner's basis for the rejection with regard to the recitation of the phrase "adapted to" is rendered moot.

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Docket No. 4303-4050US2**CONCLUSION**

Based on the foregoing amendments and remarks, applicant respectfully submits that the pending claims in the present application are in condition for allowance.

AUTHORIZATION

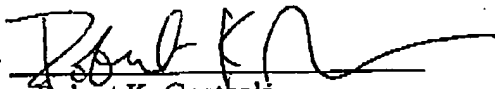
The Patent and Trademark Office is hereby authorized to charge any fees that are properly assessable to this case, or credit any overpayment to Deposit Account No. 13-4500, Order No. 4303-4050US2.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 13-4500, Order No. 4303-4050US2. A DUPLICATE COPY OF THIS SHEET IS ATTACHED.

Respectfully submitted,

MORGAN & FINNEGAN, L.L.P.

Dated: September 6, 2005

By 
Robert K. Goethals
Registration No. 36,813

MORGAN & FINNEGAN, L.L.P.
3 World Financial Center
New York, New York 10281-2101
(212) 415-8729 (Direct Dial)
(212) 415-8701 (Facsimile)